Accordingly the learned deputy registrar's certificate is amended to the effect that item 19 of the bill of costs is allowed at $12,500. The cost of this review will be paid by the plaintiffs. I fix it at $300.

Order accordingly.

Solicitors: *Azman, Davidson & Co; Shearn Delamore & Co.*

Reported by *Yap Shao Sin*

Kumpulan Guthrie Sdn Bhd v Valaithan a/l Raman Nair & Ors

HIGH COURT (JOHORE BAHRU) — CIVIL APPEAL NO 16-21-88
LC VOHRAH J
2 SEPTEMBER 1989

Labour Law — Wrongful dismissal — Termination benefits — Whether new employment offered less favourable — Whether complainants' refusal constituted voluntary resignation — Employment Act 1955, ss 2, 13(2) & 60J — Employment (Termination and Lay-Off Benefits) Regulations 1980, reg 4(2)(a)

The appellant/defendant is the manager of Ladang Lambak Elaeis. The complainants/respondents were employed as rubber tappers on Ladang Lambak Elaeis. The respondents became redundant when the rubber trees in Ladang Lambak Elaeis were felled for replanting. Each of them was served with a notice dated 13 January 1987 from the appellant stating that 'you are now on a day-to-day basis a rubber tapper and you will be transferred as a general worker when the trees are felled in early February and March 1987'. Subsequently, on 28 February 1987, the appellant sent each of them a letter which offered three options — (a) a transfer to Ladang Sembrong as a rubber tapper; (b) a transfer to Ladang Tun Dr Ismail as a harvester; or (c) a transfer from the job of rubber tapper to that of general worker within Ladang Lambak Elaeis. The respondents refused to accept any of these three positions. They filed a claim against the 'pengurus' of Ladang Lambak Elaeis ('the defendant') for termination benefits under the Employment (Termination and Lay-Off Benefits) Regulations 1980 made pursuant to s 60J of the Employment Act 1955 ('the Act'). The appellant was ordered to pay a total sum of $14,687.37 as termination benefits to the respondents.

Held, dismissing the appeal:

(1) The appellant suffered neither injustice nor prejudice when the Penolong Pengarah Buroh gave her decision before or without giving consideration to a written submission on behalf of the appellant.

(2) The question as to who the actual employer was could not have affected the Penolong Pengarah Buroh's finding of fact that the new employment was less favourable than the previous one.

(3) The unilateral act of the appellant in converting the status of the respondents from that of permanent employees to that of daily-paid workers was clearly a case of subjecting the respondents to less favourable employment of a kind which constituted wilful breach by the appellant of a condition of the respondents' contract of service under s 13(2) of the Act entitling them per se to termination benefits.

Legislation referred to
Employment Act 1955 ss 2, 13(2), 60J
Employment (Termination and Lay-Off Benefits) Regulations 1980 reg 4(2)(a)

Yusof Khan for the appellant.
P Kuppusamy for the respondents.

Cur Adv Vult

LC Vohrah J: Kumpulan Guthrie Sendirian Bhd ('Kumpulan Guthrie') is the manager of Ladang Lambak Elaeis, an estate which is owned by Permodalan National Bhd. Valaithan a/l Raman Nair and the ten other respondents ('the complainants') were employed as rubber tappers on Ladang Lambak Elaeis and they filed a claim at the Labour Department in Kluang against the 'pengurus' of Ladang Lambak Elaeis ('the defendant') for termination benefits under the Employment (Termination and Lay-off Benefits) Regulations 1980 made pursuant to s 60J of the Employment Act 1955. After inquiring into the complaint under s 69 of the Act, the Penolong Pengarah Buroh ordered the defendant to pay a total sum of $14,687.37 as termination benefits to the complainants.

The undisputed facts insofar as they were relevant to the appeal were as follows. The complainants became redundant when the rubber trees in Ladang Lambak Elaeis were felled for replanting. Each of them was served with a notice dated 13 January 1987 bearing the Kumpulan Guthrie letterhead and logo (exh C3), signed by the 'assistant-in-charge, South' of Ladang Lambak Elaeis and stating that 'you are now on a day-to-day basis a rubber tapper and you will be transferred as a general worker when the trees are felled in early February and March 1987'. Subsequently on 28 February 1987 the defendant sent each of them a letter which offered three options — (a) a transfer to Ladang Sembrong as a rubber tapper; (b) a transfer to Ladang Tun Dr Ismail as a harvester; or (c) a transfer from the job of rubber tapper to that of general worker within Ladang Lambak Elaeis. Although Ladang Sembrong and Ladang Tun Dr Ismail belonged to Kumpulan Guthrie, the complainants refused to accept any of these three positions and it was argued on behalf of them that the new employment offered to them was less favourable and they were accordingly entitled to the payment of termination benefits under reg 4(2)(a). It was contended on behalf of the defendant that the refusal by the complainants to accept the new employment constituted voluntary resignation on their part and they were accordingly not entitled to the payment of termination benefits. The Penolong Pengarah Buroh who decided the dispute found, inter alia, that the defendant by virtue of s 2 of the Employment Act 1955 could be considered as the employer for the purposes of

the complainants' claim; that the proposed transfer from Ladang Lambak Elaeis to the two other estates, Ladang Sembrong and Ladang Tun Dr Ismail, some 40 to 60 miles away from Ladang Lambak Elaeis entailing the uprooting of their families was a good reason for the complainants to reject the defendant's offer of the new employment; and that the complainants who, as rubber tappers working only between six to six and a half hours per day on Ladang Lambak Elaeis, would have had to work eight hours per day there as general workers for 'slightly' lower wages and that they would have had to work an extra one and a half hours to earn the same amount that they were earning as ordinary tappers, and that accordingly general workers in Ladang Lambak Elaeis earned 'effectively' much less than rubber tappers there.

In the appeal before me, counsel for Kumpulan Guthrie challenged the decision of the Penolong Pengarah Buroh on two grounds:

(1) that having regard to the definition of 'employer' in s 2 of the Act the complaint should have been brought not against the defendant but against Kumpulan Guthrie; and
(2) that the Penolong Pengarah Buroh should have waited to consider the submission that was to have been made on behalf of the defendant before giving her decision for the payment of termination benefits to the complainants.

First, I will deal with the second ground. Counsel for Kumpulan Guthrie contended that had the Penolong Pengarah Buroh considered the submission that was to have been made on behalf of the defendant, her attention would have been directed specifically to the provisions of reg 4 of the Employment (Termination and Lay-Off Benefits) Regulations 1980 and she would have come to the conclusion that the terms of the new employment in one of the three alternative jobs were not less favourable than those they had enjoyed as rubber tappers in Ladang Lambak Elaeis. Counsel for the complainants argued that since the claim itself was based on reg 4(2)(a), the Penolong Pengarah Buroh must have considered these provisions especially since the regulation was dealt with in the written submission filed on behalf of the complainants. It is clear from the record that both parties were required to hand in their written submissions within one week of 7 December 1987. When these written submissions were not received by 14 December 1987, she extended the deadline to 23 December 1987. Only the complainants complied with the new deadline and, in my view, she was fully entitled to give her decision on the basis of the evidence she had recorded and the only written submission she had received. There was no allegation of any breach of the rules of natural justice in the course of action that she took — only the complaint that had she waited to consider the written submission of the defendant her attention would have been drawn specifically to the provisions of reg 4 and she might then have decided that the complainants were not entitled to termination benefits. It was however clear from her written judgment that although she made reference to reg 8 relating to the change of ownership of business and cl 3(ii)(b) of the memorandum of agreement between MAPA and NUPW, she did direct her attention to reg 4 and found for a fact that the complainants were justified in rejecting the offer of new employment in Ladang Sembrong or Ladang Tun Dr Ismail situated 40 to 60 miles away from Ladang Lambak Elaeis as acceptance would have meant the uprooting of family life. She also found for a fact that had they accepted the offer to stay on at Ladang Lambak Elaeis to work as general workers they would have earned much less than what they were earning as rubber tappers as was obvious from the comparative wage tables. What was therefore uppermost on her mind was the question as to whether the new contract of employment was in terms and conditions less favourable than those on which they were previously employed and it was obvious from the record that she found for a fact that the new terms and conditions were less favourable and that the complainants were accordingly entitled to reject their new employment and that therefore termination benefits were payable. In my view, the defendant suffered neither injustice nor prejudice when the Penolong Pengarah Buroh gave her decision before or without giving consideration to a written submission on behalf of the defendant. I therefore found no merit in this ground.

As to the first ground, it was the contention of counsel for Kumpulan Guthrie that the claim should have been brought directly against Kumpulan Guthrie and not against the defendant because by the wrong party having been named, the Penolong Pengarah Buroh was made to labour under the misapprehension that the defendant (or Ladang Lambak Elaeis) was the actual employer of the complainants and that the contracts of service of the complainants were with the defendant and not with Kumpulan Guthrie. In considering the letter of 28 February 1987 offering the complainants the three options, the Penolong Pengarah Buroh, having regard to the provisions of s 2 of the Act, treated the defendant as the employer for the purposes of the claim before her but it was clear to me that the issue that was uppermost in her mind (and the issue to which counsel asked me specifically to address my mind in the appeal) was whether the terms and conditions of the new employment offered to the complainants in the letter were less favourable than those on which they were previously employed. Whether Kumpulan Guthrie should have been cited instead of the defendant as the defendant in the claim before the Penolong Pengarah Buroh, in my view, was not important because the issue, and the correct issue, which pre-occupied her mind was whether (in her own words) '[the] employment of the 11 complainants who were rub-

ber tappers had in fact been terminated by the defendant by (a) transferring the complainants to Sembrong Estate, Layang-Layang; or (b) giving alternative employment as general workers in the same estate; or (c) change of work as harvesters to another estate belonging to the same company, when all the rubber trees in Lambak Elaeis were felled'. She recognized the right of the employer as such to transfer employees but she found for a fact (as I have already observed when dealing with the second ground) that the complainants had good reason to reject the offer for transfer. Of the complainants, seven were women who obviously would have been hard put to it if they had had to work as harversters as they would then have had the arduous and risky job of climbing ladders to chop down the oil palm fruit. The question as to who the actual employer was could not have affected her finding of fact that the new employment was less favourable than the previous one. I therefore found no merit in this ground.

I must say I readily agreed with counsel for the complainants that the unilateral act of the defendant in converting the complainants from the status of permanent employees to that of daily-paid workers was clearly a case of subjecting the complainants to less favourable employment of a kind which constituted wilful breach by the defendant of a condition of the complainants' contract of service under s 13(2) of the Act entitling them per se to termination benefits.

In my view, the Penolong Pengarah Buroh addressed the real issue before her correctly having regard to equity and the substantial merits of the claim. The appeal was accordingly dismissed with costs.

Appeal dismissed.

Solicitors: *Shearn Delamore & Co; P Kuppusamy & Co.*

Reported by *Kevin Mathews*

Bank Bumiputra Malaysia Bhd v Henry Ginai Anak Langgie

HIGH COURT (KUCHING) — ORIGINATING SUMMONS NO KG 300 OF 1987
HAIDAR J
26 AUGUST 1989

Agency — Power of attorney — Interpretation — Whether attorney had acted outside the scope and authority of his powers

The defendant was the registered proprietor of the land described as lot 211 block 11 Muara Tebas Land District situated at Air Terjon Tabuan Kuching, Sarawak ('the land'). On 18 March 1983, he granted a power of attorney to his brother John A Langgi ('the attorney') in respect of the land. The attorney, in purported exercise of his powers, charged the land to the plaintiff to obtain overdraft facilities of $50,000 and letter of credit/trust receipts for $30,000 for the use of one company named Tanah Sheema Enterprise ('the company') vide a memorandum of charge dated 1 March 1986. The plaintiff now seeks an order to sell by public auction the defendant's land.

Held, dismissing the summons:

(1) A power of attorney is construed strictly by the courts according to well-recognized rules. The powers of attorney are interpreted as giving only such authority as they confer expressly or by necessary implication.

(2) The attorney in purported exercise of his authority acted in excess of and outside the reasonable scope of his special powers by charging the land for his own personal benefit or for the use of the company and not for the benefit of the defendant. Unless the defendant expressly authorized it or adopted it by taking the benefit of it or otherwise, the plaintiff, as the third party, will be unable to make the defendant, as principal, liable.

[*Editorial Note*: The plaintiff has appealed to the Supreme Court vide Civil Appeal No 02-391 of 1989.]

Cases referred to

1 *Esdaile & Ors* v *La Nauze & Heyland* (1835) 160 ER 160 (refd)
2 *Jacobs* v *Morris* [1902] 1 Ch 816 (folld)

Legislation referred to

Sarawak Land Code (Cap 81) s 148(2)(c)

Clement Eddy for the plaintiff.
Ernest Chua for the defendant.

Cur Adv Vult

Haidar J: The plaintiff, by Originating Summons No KG 300/87 filed on 9 October 1987, seeks an order to sell by public auction the defendant's land described as lot 211 block 11 Muara Tebas Land District situate at Air Terjon, Tabuan, Kuching, Sarawak containing an area of 3925sq m, more or less, ('the land') to recover

(i) the sum of $54,832.44 due as at 24 February 1987 to the plaintiff by the defendant under a memorandum of charge no L 3019/1986 executed and registered at the Kuching Land Registry Office on 24 March 1986;